

AMENDED IN ASSEMBLY JANUARY 17, 2008

AMENDED IN SENATE APRIL 19, 2007

SENATE BILL

No. 191

Introduced by Senator Padilla

February 7, 2007

An act to ~~add Section 1771.11 to~~ amend Section 1771.7 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 191, as amended, Padilla. ~~Labor~~ *Public works: labor compliance programs; approved private entity; remedies; programs.*

Existing law requires an awarding body, as defined, that chooses to use funds from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project to initiate and enforce, or contract with a 3rd party to initiate and enforce, a labor compliance program, as defined, for that public works project.

This bill would add the Kindergarten-University Public Education Facilities Bond Act of 2006 as a source of funds for a public works project that would require an awarding body, if it chooses to use those funds, to initiate and enforce, or contract with a 3rd party to initiate and enforce, a labor compliance program.

~~Existing law requires an awarding body, as defined, that chooses to use funds derived under specified bond acts for a public works project to either initiate and enforce, or to contract with a 3rd party to initiate and enforce, a labor compliance program, as defined, for that public works project.~~

~~This bill would authorize an awarding body, aggrieved employee, or a contractor to file a complaint with the Director of Industrial Relations~~

~~against an approved private entity, as defined, that contracted with the awarding body to initiate and enforce a labor compliance program for a public works project for failing to perform the responsibilities required by statute and state regulations for a labor compliance program, and would establish administrative procedures to address these complaints. This bill would also authorize the director, under these administrative procedures, to order the approved private entity to return the fees paid by an awarding body and to suspend the approval of the private entity to initiate and enforce a labor compliance program until a petition for revocation of the approval is heard and determined as provided. This bill would specify that these provisions apply only to contracts that are entered into on or after the operative date of the bill.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1771.7 of the Labor Code is amended to
2 read:
3 1771.7. (a) (1) An awarding body that chooses to use funds
4 derived from ~~either the Kindergarten-University Public Education~~
5 Facilities Bond Act of 2002 ~~or, the Kindergarten-University Public~~
6 Education Facilities Bond Act of 2004, *or the*
7 *Kindergarten-University Public Education Facilities Bond Act of*
8 2006 for a public works project, shall initiate and enforce, or
9 contract with a third party to initiate and enforce, a labor
10 compliance program, as described in subdivision (b) of Section
11 1771.5, with respect to that public works project.
12 (2) If an awarding body described in paragraph (1) chooses to
13 contract with a third party to initiate and enforce a labor compliance
14 program for a project described in paragraph (1), that third party
15 shall not review the payroll records of its own employees or the
16 employees of its subcontractors, and the awarding body or an
17 independent third party shall review these payroll records for
18 purposes of the labor compliance program.
19 (b) This section applies to public works that commence on or
20 after April 1, 2003. For purposes of this subdivision, work
21 performed during the design and preconstruction phases of
22 construction, including, but not limited to, inspection and land

1 surveying work, does not constitute the commencement of a public
2 work.

3 (c) (1) For purposes of this section, if any campus of the
4 California State University chooses to use the funds described in
5 subdivision (a), then the “awarding body” is the Chancellor of the
6 California State University. For purposes of this subdivision, if
7 the chancellor is required by subdivision (a) to initiate and enforce,
8 or to contract with a third party to initiate and enforce, the labor
9 compliance program described in that subdivision, then in addition
10 to the requirements imposed upon an awarding body by subdivision
11 (b) of Section 1771.5, the Chancellor of the California State
12 University shall review the payroll records described in paragraphs
13 (3) and (4) of subdivision (b) of Section 1771.5 on at least a
14 monthly basis to ensure the awarding body’s compliance with the
15 labor compliance program.

16 (2) For purposes of this subdivision, if an awarding body
17 described in subdivision (a) is the University of California or any
18 campus of that university, and that awarding body is required by
19 subdivision (a) to initiate and enforce, or to contract with a third
20 party to initiate and enforce, the labor compliance program
21 described in that subdivision, then in addition to the requirements
22 imposed upon an awarding body by subdivision (b) of Section
23 1771.5, the payroll records described in paragraphs (3) and (4) of
24 subdivision (b) of Section 1771.5 shall be reviewed on at least a
25 monthly basis to ensure the awarding body’s compliance with the
26 labor compliance program.

27 (d) (1) An awarding body described in subdivision (a) shall
28 make a written finding that the awarding body has initiated and
29 enforced, or has contracted with a third party to initiate and enforce,
30 the labor compliance program described in subdivision (a).

31 (2) (A) If an awarding body described in subdivision (a) is a
32 school district, the governing body of that district shall transmit
33 to the State Allocation Board, in the manner determined by that
34 board, a copy of the finding described in paragraph (1).

35 (B) The State Allocation Board may not release the funds
36 described in subdivision (a) to an awarding body that is a school
37 district until the State Allocation Board has received the written
38 finding described in paragraph (1).

39 (C) If the State Allocation Board conducts a postaward audit
40 procedure with respect to an award of the funds described in

subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program. *This subdivision does not affect whether work is covered by paragraph (1) of subdivision (a) of Section 1720.*

~~SECTION 1. Section 1771.11 is added to the Labor Code, to read:~~

~~1771.11. (a) The remedies in this section are available only against an approved private entity.~~

~~(b) (1) An awarding body, aggrieved employee, or a contractor may file with the director a complaint that an approved private entity has not competently performed the responsibilities required by statute and state regulations for a labor compliance program.~~

~~(2) Within five business days of receipt of the complaint, the director shall provide the approved private entity with a notice of the complaint and an opportunity to respond to the complaint. A response to the complaint may be filed no later than 10 business days after the date the director served the notice of the complaint.~~

~~(3) If the director determines that the complaint appears to be meritorious, the director shall hold a hearing in accordance with this chapter and shall issue a written decision, including findings, regarding the complaint. If the director finds in favor of the~~

1 complainant, the director's decision may order either or both of
2 the following:

3 (A) That the approved private entity return all or part of its fee,
4 if already paid, to the awarding body, depending on the seriousness
5 of the violation or violations.

6 (B) A suspension of the approval of the approved private entity
7 to operate a labor compliance program, until a petition for
8 revocation of the approval is heard and determined in accordance
9 with Section 1773.5.

10 (4) (A) The director's decision shall be served on all parties
11 and the awarding party pursuant to Section 1013 of the Code of
12 Civil Procedure by first class mail at the last known address of the
13 party on file with the director. Within 15 days of the issuance of
14 the decision, the director may reconsider or modify the decision
15 to correct an error, except that a clerical error may be corrected at
16 any time.

17 (B) The director shall adopt regulations setting forth procedures
18 for hearings under this subdivision.

19 (c) Any party to the complaint filed under paragraph (1) of
20 subdivision (b) may obtain review of the director's decision by
21 filing a petition for a writ of mandate to the appropriate superior
22 court pursuant to Section 1094.5 of the Code of Civil Procedure
23 within 45 days after service of the decision. If no petition for a
24 writ of mandate is filed within 45 days after service of the decision,
25 the director's order shall become final.

26 (d) The remedies provided by this section do not preclude either
27 of the following:

28 (1) Other remedies the awarding body may have under the
29 contract with the approved private entity.

30 (2) Other procedures used by the director to revoke the approval
31 of private entities to operate labor compliance programs for public
32 works projects.

33 (e) For purposes of this section, "approved private entity" means
34 a private entity that is approved by the director to initiate and
35 enforce a labor compliance program for a public works project.

36 (f) This section is deemed to be part of every contract between
37 an awarding body and an approved private entity to initiate and
38 enforce a labor compliance program for a public works project.
39 This section applies only to contracts for an approved private entity

- 1 to initiate and enforce a labor compliance program that are entered
- 2 into on and after the operative date of this section.

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